

## 37 Am. Jur. 2d Fraud and Deceit § 45

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### Fraud and Deceit

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### III. Means of Perpetration

#### A. In General

## § 45. Taking unconscionable or undue advantage of another

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) 27, 28

Even where there is no actual fraud, courts of equity will frequently relieve against hard and unconscionable contracts that have been procured by taking advantage of the condition, circumstances, or necessities of the other party,<sup>1</sup> especially if such contracts are made by parties acting in a fiduciary capacity<sup>2</sup> or if the party imposed upon has a mental deficiency or weakness.<sup>3</sup> Accordingly, fraud, wherever found and in whatever guise, will not be permitted to give an inequitable advantage to the one who has consciously perpetrated the fraud.<sup>4</sup>

Not all foolish transactions are fraudulent, however, and it is not the duty or within the power of the courts to relieve a person from a contract merely because it is in its terms unwise or even foolish.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Swiney v. Womack](#), 343 Ill. 278, 175 N.E. 419 (1931); [Griffin v. Griffin](#), 125 Vt. 425, 217 A.2d 400 (1965).

<sup>2</sup> [Gray v. Gray](#), 246 Ala. 627, 22 So. 2d 21 (1945); [Griffin v. Griffin](#), 125 Vt. 425, 217 A.2d 400 (1965).

<sup>3</sup> § 31.

<sup>4</sup> [Scarborough v. Atlantic Coast Line R. Co.](#), 178 F.2d 253, 15 A.L.R.2d 491 (4th Cir. 1949).

<sup>5</sup> [Woods v. Griffin](#), 204 Ark. 514, 163 S.W.2d 322 (1942).

